Golden Gate University *and* Office & Professional Employees International Union, Local No. 3, AFL-CIO. Case 20-CA-16162

September 8, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on April 9, 1981,[1] by Office & Professional Employees International Union, Local No. 3, AFL-CIO, herein called the Union, and duly served on Golden Gate University, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 20, issued a complaint on May 15, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 19, following a Board election in Case 20-RC-14968, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[2] and that, commencing on or about April 2, and at all times thereafter, Respondent has refused, and continues to date to refuse, to furnish the Union with requested information necessary for and relevant to its performance of its function as the exclusive bargaining representative,[3] and to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 28, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 18, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 24, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent denies, *inter alis*, that the unit found appropriate in Case 20-RC-14968 constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent further denies that the Union is the exclusive collective-bargaining representative of the employees in the unit. Additionally, Respondent denies that the information requested by the Union (as described in fn. 3, *supra*) is necessary for and relevant to the Union's performance of its collective-bargaining function. Finally, Respondent asserts in its answer to the complaint that the Certification of Representative issued to the Union in Case 20-RC-14968 is faulty, void, invalid, and contrary to law.

The General Counsel argues that all issues raised by Respondent in this proceeding were resolved in the underlying representation proceeding. The General Counsel further asserts that, Respondent having admitted in its answer to the complaint that the Union requested Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the employees in the unit found appropriate, and that Respondent refused the Union's request, there are no issues of fact or law requiring a hearing in this proceeding. We agree with the General Counsel.

Review of the record in this case, including the record in the representation proceeding, Case 20-RC-14968, establishes that pursuant to a Stipulation for Certification Upon Consent Election, approved by the Regional Director for Region 20 on January 30, 1980, an election was conducted on March 4, 1980. The tally was 32 votes for, and 36 votes against, the Union, with 16 challenged ballots, a sufficient number to affect the results of the election. Subsequently, Respondent filed "Objections to

[1] All dates herein are 1981, unless otherwise indicated.

[2] Official notice is taken of the record in the representation proceeding, Case 20-RC-14968, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[3] The information which the Union has requested Respondent to provide is the names, addresses, and phone numbers of each individual employee, with the date of hire, classification, department, and rate of pay for each employee, list of benefits available to employees, summary of personnel policies whether written or unwritten regarding sick leave, vacations, holidays, working hours, classifications and salary rates for each, job descriptions, salary review procedures, salary increases and promotions, and copies of any handbooks and manuals or memorandums reflecting the above policies.

Conduct of the Election and Conduct Affecting the Outcome of the Election."

The Regional Director investigated the challenges to ballots and concluded that substantial and material issues of fact existed concerning the eligibility of the 16 challenged voters which could best be resolved by a hearing. Accordingly, a hearing was conducted on April 3, 1980, and on June 3, 1980, the Hearing Officer issued his report on the challenged ballots, in which he recommended that the challenges to 5 ballots be sustained and the challenges to 11 ballots be overruled, and that those latter ballots be opened and counted.

Subsequently, Respondent filed exceptions to the Hearing Officer's report on the challenged ballots. On September 26, 1980, the Board issued its Decision and Direction,[4] in which it adopted the Hearing Officer's findings and recommendations in regard to the challenged ballots, and directed that the 11 ballots for which the challenges were overruled be opened and counted.

On October 8, 1980, the 11 challenged ballots were opened and counted, and a revised tally of ballots was issued, showing 41 votes for, and 38 votes against, the Union. Thereafter, Respondent filed "Supplemental Objections to Conduct of Election, Conduct Affecting Results of Election and Counting of Challenged Ballots."

On November 17, 1980, the Regional Director issued her report on Respondent's objections in which she recommended that those objections be overruled. Thereafter, Respondent filed exceptions to the Regional Director's Report on Objections. On March 19, 1981, the Board issued its Supplemental Decision and Certification of Representative,[5] in which it adopted the Regional Director's findings and recommendations in regard to Respondent's objections and issued a Certification of Representative certifying the Union as the exclusive representative of the employees in the unit found appropriate for the purposes of collective bargaining.

In its answer to the Notice To Show Cause, Respondent renews the contentions it earlier put forth in support of its exceptions to the Regional Director's Report on Objections.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[6]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at times material herein, a California corporation, with an office and place of business in San Francisco, California, where it is engaged in the operation of a nonprofit, tax-exempt educational institution providing undergraduate and graduate programs. During the past calendar year, Respondent, in the course and conduct of its operations, received gross revenues (excluding revenues not available for operating expenses) in excess of $1 million. During the same period, Respondent has purchased and received goods and services valued in excess of $10,000 directly from suppliers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All regular full-time employees employed by the Employer in the City and County of San Francisco, excluding part-time employees, professional employees, confidential employees,

[4] Not included in volumes of Board Decisions.
[5] Not included in volumes of Board Decisions.
[6] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

managerial employees, faculty, and guards and supervisors as defined in the Act.

2. The certification

On March 4, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 20, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on March 19, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 26, 1981, and at all times thereafter, the Union has requested Respondent to furnish the Union with information necessary for and relevant to its performance of its function as the exclusive bargaining representative, and to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 2, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to furnish the Union with the aforementioned requested information, and to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 2, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request furnish the Union with the names, addresses, and phone numbers of each individual employee, with the date of hire, classification, department, and rate of pay for each employee, list of benefits available to employees, summary of personnel policies whether written or unwritten regarding sick leave, vacations, holidays, working hours, classifications and salary rates for each, job descriptions, salary review procedures, salary increases and promotions, copies of any handbooks and manuals or memorandums reflecting the above policies, and any other information necessary for and relevant to its performance of its function as the exclusive bargaining representative, and bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Golden Gate University is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Office & Professional Employees International Union, Local No. 3, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular full-time employees employed by the Employer in the City and County of San Francisco; excluding part-time employees, professional employees, confidential employees, managerial employees, faculty, and guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 19, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collec-

tive bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 2, 1981, and at all times thereafter, to furnish the Union with requested information necessary for and relevant to its performance of its functions as the exclusive bargaining representative, and to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to provide information and refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Golden Gate University, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Office & Professional Employees International Union, Local No. 3, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All regular full-time employees employed by the Employer in the City and County of San Francisco; excluding part-time employees, professional employees, confidential employees, managerial employees, faculty, and guards and supervisors as defined in the Act.

(b) Refusing to provide the Union with information necessary for and relevant to its performance of its function as the exclusive bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide the Union with the names, addresses, and phone numbers of each individual employee, with the date of hire, classification, department, and rate of pay for each employee, list of benefits available to employees, summary of personnel policies whether written or unwritten regarding sick leave, vacations, holidays, working hours, classifications, and salary rates for each, job descriptions, salary review procedures, salary increases and promotions, copies of any handbook and manuals or memorandums reflecting the above policies, and any other information necessary for and relevant to its performance of its function as the exclusive bargaining representative.

(c) Post at its San Francisco, California, facility copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Office & Professional Employees International Union, Local No. 3, AFL-CIO, as the

exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide Office & Professional Employees International Union, Local No. 3, AFL-CIO, with requested information necessary for and relevant to its performance of its function as the exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All regular full-time employees employed by the Employer in the City and County of San Francisco; excluding part-time employees, professional employees, confidential employees, managerial employees, faculty, and guards and supervisors as defined in the Act.

WE WILL, upon request, provide the above-named Union with the names, addresses, and phone numbers of each individual employee, with the date of hire, classification, department, and rate of pay of each employee, list of benefits available to employees, summary of personnel policies whether written or unwritten regarding sick leave, vacations, holidays, working hours, classifications and salary rates for each, job descriptions, salary review procedures, salary increases and promotions, copies of any handbooks and manuals or memorandums reflecting the above policies, and any other information necessary for and relevant to its performance of its function as the exclusive bargaining representative.

GOLDEN GATE UNIVERSITY